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January 31, 2003

**VIA ELECTRONIC
COMMENT FILING SYSTEM**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: MB Docket No. 02-277
MM Docket No. 01-235
MM Docket No. 01-317
MM Docket No. 00-244
FCC Omnibus Ownership Proceeding
Reply Comments of Westwind Communications, L.L.C.**

Dear Ms. Dortch:

I am writing in my capacity as Chairman of Westwind Communications, L.L.C. ("Westwind"), the licensee of Television Station KBAK-TV, Bakersfield, California. This letter shall serve as Westwind's Reply Comments in the FCC Omnibus Ownership Proceeding.

KBAK-TV is a CBS affiliate located in Bakersfield. The Bakersfield DMA is ranked 130th among the nation's 210 Nielsen DMAs for the 2002-2003 television season. According to Nielsen, the Bakersfield DMA contains approximately 186,400 television households, which represent 0.175 percent of all U.S. television households.

Westwind supports the repeal of the Commission's newspaper/broadcast cross-ownership rule and substantial liberalization of the television duopoly rule. Westwind particularly urges the Commission to ensure that such liberalization will not be limited to larger markets but will also reach smaller markets such as Bakersfield. The economic realities facing local television stations are even more severe in smaller markets than in New York and Los Angeles. Thus, the Commission should make sure that needed regulatory relief is not restricted to the top 50 markets.

The record in this proceeding overwhelmingly demonstrates that the newspaper/broadcast cross-ownership rule is unnecessary to protect diversity and competition. Hearst-Argyle Television, Inc.'s comments provided a comprehensive examination of traditional media "voices" in each of the nation's 210 Nielsen DMAs. These traditional "voices" include full-power television stations, low-power television stations, radio stations, daily newspapers, cable systems, and satellite providers. Hearst-Argyle found that, on average, there are 81 traditional media voices and 39 separate owners in each DMA. *See* Comments of Hearst-Argyle, MM Docket No. 01-235 (filed Dec. 3, 2001), at Exhibit 1.

Notably, Hearst-Argyle's study shows that, even in smaller markets, there is significant media diversity. In markets ranked 101 through 210, which include Bakersfield, there are, on average, 24 independent voices. *See id.* at Exhibit 2. Thus, in such smaller markets, even if a newspaper and television station were to merge, on average there would still be 23 separate owners of media voices. Because there are so many diverse outlets for news and information in each market, the newspaper/broadcast cross-ownership rule is simply unnecessary and should be repealed. Westwind supports the comments of Hearst-Argyle, Tribune, NAB, Newspaper Association of America, and others who urge the Commission to repeal the cross-ownership rule.

Furthermore, given the multiple media outlets that compete for households in each market throughout the nation, the current television duopoly rule should be liberalized. Full power television stations, on a daily basis, have to compete with low-power television stations, radio stations, newspapers, cable systems, and satellite providers for the attention of consumers. The D.C. Circuit Court's decision in *Sinclair Broadcast Group v. FCC*, 284 F.3d 148 (D.C. Cir. 2002), is based on common sense—any local television ownership rule cannot take into account only full power broadcast television stations.

Television stations like KBAK-TV simply do not operate in a vacuum. For example, KBAK-TV competes with a multitude of other media voices. In the Bakersfield market, there are more than 49 voices in the media market. They include: four full power television stations (ABC, CBS, NBC, UPN), four low power television stations (one of which is affiliated with Fox and has 5% of the market's total viewership, another is affiliated with Univision and has 9% of the market's total viewership), 37 radio stations, three daily newspapers, and several cable systems (including some areas that are "overbuilt"). In addition, the WB network distributes its programming over the local

cable systems through its 100+ markets "station in a box" program. Finally, the signals of a number of Los Angeles market television stations are available via cable systems in the DMA, and the signals of several Fresno DMA television stations are available over the air in portions of the Bakersfield DMA. The point is clear: competition is robust, wide-open, and varied in smaller markets such as Bakersfield. In Bakersfield, the LPTV stations affiliated with Fox and Univision are significant players with 14% of the market's total viewership.

Westwind also believes that, as demonstrated in Bakersfield, a television station is a television station (indeed, sometimes even an LPTV station). The Commission should seize this opportunity to eliminate the anachronistic UHF discount. Westwind's KBAK-TV is a UHF station, so this suggestion is, at the margin, contrary to its own economic self-interest since continuation of the discount could enlarge the theoretical pool of buyers for the station were it to be sold. Nonetheless, Westwind urges the Commission to maintain the 35 national cap on national television ownership but to eliminate the UHF discount.

Westwind agrees with the various commenters in this proceeding who argue that there are simply too many difficulties associated with the duopoly rule in its current form. Westwind agrees that the Commission should adopt a relaxed local television ownership rule that is based on television station audience share. Particularly, Westwind joins the many broadcast groups that support NAB's "10/10" proposal that was advanced in NAB's initial comments in this proceeding. *See, e.g.,* Comments of NAB at 79-84; Comments of Coalition Broadcasters LIN Television et al. at 11; Comments of Duhamel Broadcasting Enterprises at 2; Comments of Pappas Telecasting at 13-15; Comments of Paxson Communications at 30-31.

Under NAB's proposal, two local broadcast stations would be permitted to combine as long as one of the stations has less than 10 percent of the 7:00 a.m. to 1:00 a.m. daypart audience share as measured over the past four Nielsen books. NAB's proposal avoids the difficulties inherent in the Commission's current voice-count methodology and also easily captures the market strength of any proposed combination. Also, the proposal applies to all markets equally and thus would reach smaller television markets, such as Bakersfield.

While Westwind endorses NAB's "10/10" proposal, we also support Hearst-Argyle's "30 Percent Local Audience Share" proposal. The Hearst-Argyle proposal is grounded on the same principles as NAB's rule and would provide an effective antitrust analog for the FCC to use in analyzing a proposed merger's effect on diversity and competition.

In short, as a small-market station licensee, Westwind urges the Commission to note that even in small markets such as Bakersfield, there are such a multitude of media outlets that the Commission's local ownership rules can be significantly relaxed and still protect diversity and competition. I respectfully urge the Commission to repeal the

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newspaper/broadcast cross-ownership rule and significantly liberalize the television duopoly rule in a fashion consistent with the proposals of NAB and Hearst-Argyle.

Thank you for your consideration of Westwind's views.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Desnoes", written over a large, circular, light-colored mark.

Peter Blaise Desnoes
Chairman